

**TITLE 37
INSURANCE
PART XI CHAPTER 31: EMERGENCY RULE 17 - AMENDED**

**SUSPENSION OF CERTAIN STATUTES AND REGULATIONS
REGARDING HEALTH INSURANCE
AND RELATED PROVISIONS REGARDING
ANY AND ALL HEALTH INSURANCE MATTERS
AFFECTING INSURED IN LOUISIANA CAUSED BY
HURRICANE KATRINA**

TO: All Health Insurance Insurers, Health Maintenance Organizations, Preferred Provider Organizations, Managed Care Organizations, Third Party Administrators and any and all other health insurance entities doing business in Louisiana and/or regulated by the Commissioner of Insurance pursuant to the Louisiana Insurance Code

Emergency Rule 17 was issued on September 20, 2005 and is retroactive to 12:01 a.m. on August 26, 2005. As justification for the action taken pursuant to this amendment, J. Robert Wooley, Commissioner of Insurance ("Commissioner"), hereby terminates certain sections and provisions set forth in original Emergency Rule 17 by reference as if set forth herein *in extenso*.

The Commissioner has determined that Emergency Rule 17 has had the desired effect of providing sufficient time for insureds in Louisiana to protect their health insurance needs, obtain the services of a health care provider or health care professional, file for health insurance benefits for covered claims under their health insurance policy and/or take sufficient action to begin the process to return to normalcy in the post-Katrina era. Additionally, the Commissioner has determined that the viability of the health insurance industry as well as the viability of the health care providers and health care professionals may be negatively impacted if Emergency Rule 17 is not terminated at some reasonable date in the near future.

Accordingly, the Commissioner has determined, pursuant to the grants of authority set forth in the original Emergency Rule 17, that it is appropriate to set dates for the termination of Emergency Rule 17. Additionally, the Commissioner has determined that it is proper to distinguish between those health insurance policies where the premium has been paid as compared to those where the premium has not been paid. Also, the Commissioner has determined that it is proper to distinguish between those health care providers and/or health care professionals who rendered services within and/or who operate businesses within the seven primary parishes affected by Hurricane Katrina and/or its aftermath. Lastly, recognizing that insureds/persons face numerous obstacles

with regard to their health insurance coverage the Commissioner has determined it is necessary to take action to minimize the possibility that insureds/persons may lose their health insurance due to their inability to adhere to certain pre-established time frames under the Health Insurance Portability and Accountability Act (hereinafter HIPAA) and/or certain notice time frames under the Consolidated Omnibus Budget Reconciliation Act (hereinafter COBRA).

In light of this, Emergency Rule 17 is hereby amended to provide various termination dates for the various types of health insurance and to provide for termination dates with regard to those insureds/persons located in both the primary and secondary parishes as defined in Emergency Rule 17 and to provide for the payment of claims to health care providers and health care professionals who rendered health care to insureds/persons during the time when Emergency Rule 17 is in effect. To facilitate cross referencing, this amendment will set forth both the Section of Emergency Rule 17 as issued by the Commissioner and the Section of the Emergency Rule 17 as published by the Office of the State Register.

ACCORDINGLY, THE COMMISSIONER HEREBY ADOPTS THE FOLLOWING AMENDMENTS TO EMERGENCY RULE 17:

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3147. Affirmation of Emergency 17 and Amendment

- A. Emergency Rule 17 was previously adopted by the Commissioner on September 20, 2005, retroactive to 12:01 a.m. on August 26, 2005. In furtherance of the power vested in the Commissioner and the jurisdiction of the Commissioner over all matters related to insurance that were affected by Hurricane Katrina and/or its aftermath, the Commissioner hereby amends Emergency Rule 17 to adopt new sections and provisions and to set forth dates for the termination of Emergency Rule 17.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 2005 - 40; LSA R.S. 29:724; LSA R.S. 29:766; LSA R.S. 22:2; LSA R.S. 22:3; LSA R.S. 22:1214.(7), (12) and (14); LSA R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

3149. Termination

- A. Emergency Rule 17 shall terminate for the category of insureds/persons and for the types of insurance set forth herein on the dates established below:
 - 1. Effective at 12:00 a.m. (midnight) on November 30, 2005, Emergency Rule 17 shall terminate with regards to any and all types of health insurance enumerated in Emergency Rule 17, including, but not limited to, group and individual health and accident insurance, limited benefit insurance, Medical supplement insurance, Medicare select insurance, HMOs, PPOs, MCOs, TPAs, excess loss insurance, stop loss insurance, disability income insurance, short-term health insurance, long-term care insurance and any and all other health insurance for the following category of insureds:
 - a. Any person who previously met the definition of Section 3101.A.1 (Section 17.1.A) of Emergency Rule 17 who resided in one of the following seven primary parishes: Jefferson, Orleans, Plaquemines, St. Bernard, St. Tammany, Tangipahoa and Washington.
 - b. Any person who previously met the definition of Section 3101.A.2 (Section 17.1.B) of Emergency Rule 17.
 - c. Any person who previously met the definition of Section 3101.A.3 (Section 17.1.C) of Emergency Rule 15 and who resided in one of the following seven secondary parishes: Lafourche, Livingston, St. Charles, St. James, St. John the Baptist, St. Mary and Terrebonne.
 - d. Any person who previously was extended protection pursuant to Section 3101.A.4 (Section 17.1.D) of Emergency Rule 17.

3151. Retention of Certain Provisions of Emergency Rule 17

- A. The Commissioner does not terminate the following sections of Emergency Rule 17 and these sections shall remain in effect until the Emergency Rules expires 120 days from the date of adoption, unless otherwise extended by the Commissioner.
 - 1. Section 3121.A (Section 17.12) - Medicare Supplement Premiums, which states the following:

"The Commissioner hereby suspends the requirements that the payment of Medicare supplement premiums can only be made pursuant to LSA R.S. 22:224.K.

In furtherance of this suspension, any policies that contain restrictive language relative to modes of premium payment shall allow for the acceptance of other payment methods during this State of Emergency or any subsequent State of Emergency including, but not be limited to, credit card, debit card, FEMA voucher, federal assistance, state assistance, or any and all other related or similar payment methods."

2. Section 3125.A (Section 17.14) - Claim Caused by Hurricane Katrina, which states the following:

"Emergency Rule 17 shall not relieve an insured who has a claim caused by Hurricane Katrina, or its aftermath, from compliance with the insured's obligation to provide information and cooperate in the claim adjustment process relative to such claim."

3. Section 3137.A (Section 17.20) - Purpose, which states the following:

"The provisions of Emergency Rule 17 shall be liberally construed to effectuate the intent and purpose expressed herein and to afford maximum consumer protection for the insureds of Louisiana."

4. Section 3139.A - (Section 17.21) - Enforcement and Penalties, which states the following:

"The Commissioner retains the sole authority to enforce violations of Emergency Rule 17. Accordingly, any insurer, HMOs, PPOs and MCOs, or other entity doing business in Louisiana and/or regulated by the Commissioner who violates any provision of Emergency Rule 17 shall be subject to prosecution by the Commissioner under any applicable provisions of the Louisiana Insurance Code, including the provisions of the LSA R.S. 22:250.41, et seq., 22:1211, et seq., and specifically including, but not limited to, LSA R.S.22:1214(7), (12) and (14). Additionally, the penalty provisions set forth in LSA R.S. 22:1217 shall be applicable. These provisions include penalties of \$1,000.00 for each separate act, or \$25,000.00 for each separate act if the violator knew or reasonably should have known he was in violation of Emergency Rule 17, as well as a cease and desist order and the imposition of other penalties and suspension or revocation of the license.

Additionally, LSA R.S. 22:1220, which, among other things, imposes the obligation of good faith and fairdealing shall also be subject to the sole enforcement authority of the Commissioner. That law sets forth penalties and exemplary damages which shall be enforceable by the Commissioner for any violation of Emergency Rule 17. Finally, the Commissioner reserves the sole right to make the determination regarding whether any violator shall be subject to any and all other applicable civil and criminal sanctions for violations of Emergency Rule 17."

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 2005 - 40; LSA R.S. 29:724; LSA R.S. 29:766; LSA R.S. 22:2; LSA R.S. 22:3; LSA R.S. 22:1214.(7), (12) and (14); LSA R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

3153. Health Insurance Portability and Accountability Act ("HIPAA") Provisions and Time Frames

- A. The HIPAA portability provisions generally provide that a group health plan or group health insurance issuer may disregard a period of creditable coverage if there is a subsequent 63-day break in coverage.
- B. Also, a newborn, adopted child, or child placed for adoption may not be subject to a preexisting condition exclusion period if covered under creditable coverage within 30 days of birth, adoption, or placement for adoption.
- C. The HIPAA special enrollment provisions generally provide that employees must request enrollment within 30 days of a special enrollment trigger (including loss of eligibility of coverage for loss of employer contributions) to be eligible for special enrollment.
- D. The HIPAA certification rules prescribe time periods for the provision of certificates of creditable coverage upon loss of coverage. Under the regulations, plans and issuers subject to COBRA continuation coverage provisions are required to provide an automatic certificate no later than the time for providing a COBRA election notice. Plans and issuers not subject to COBRA are required to provide the automatic certificate within a reasonable time after coverage ceases.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 2005 - 40; LSA R.S. 29:724; LSA R.S. 29:766; LSA R.S. 22:2; LSA R.S. 22:3; LSA R.S. 22:1214.(7), (12) and (14); LSA R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

3155. Adoption of Extended Time Frames for HIPAA

- A. The Commissioner hereby incorporates by reference all provisions of 70 Fed. Reg. 55500-55502 and 59620 that relate to time frames under the Health Insurance Portability and Accountability Act ("HIPAA") and 70 Fed. Reg. 55500-55502 and 59620 with regard to times frames under the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), as if set forth herein *in extenso*.
- B. With respect to insureds/persons, health insurance issuers, HMOs, PPOs, MCOs, TPAs and any and all other health insurance entities must disregard the period from August 26, 2005 through February 28, 2006 when determining any of the following time periods and dates for group and individual health insurance coverage:
 - 1. The 63-day break in coverage period.
 - 2. The 30-day period to secure creditable coverage without a preexisting condition exclusion for certain children.
 - 3. The 30-day period to request special enrollment.
- C. The provisions of LSA - R.S. 22:215.6 (entitled Part VI. Health and Accident Insurance) and any and all provisions in LSA - R.S. 22:250.1 *et seq.* (entitled Part VI-C. Assuring Portability, Availability and Renewability of Health Insurance Coverage) shall be in conformity with any and all extension of timeframes set forth in 29 CFR Part 54 and 29 CFR 2560 and 2590.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 2005 - 40; LSA R.S. 29:724; LSA R.S. 29:766; LSA R.S. 22:2; LSA R.S. 22:3; LSA R.S. 22:1214.(7), (12) and (14); LSA R.S. 49:950 *et seq.*

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

3157. Consolidated Omnibus Budget Reconciliation Act ("COBRA") Provisions and Timeframes

- A. The COBRA continuation coverage provisions generally provide insureds/persons a period of at least 60 days to elect COBRA continuation coverage under a group health plan. See ERISA section 605 and Code section 4980B(f)(5).
- B. Plans are required to allow payers to pay premiums in monthly installments and plans cannot require payment of premiums before 45

days after the day of the initial COBRA election. ERISA section 602(3) and Code section 4980B(f)(2)(C). Under the COBRA rules, a premium is considered paid timely if it is made not later than 30 days after the first day in the period for which payment is being made. See ERISA section 602(2)(C) and Code section 4980B(f)(2)(B)(iii), 26 CFR 54.4980B-8 Q&A-5(a).

- C. Notice provisions prescribe time periods for individuals to notify the plan of a qualifying event or determination of disability and for plans to notify insureds/persons of their rights to elect COBRA continuation coverage. See ERISA section 606 and Code section 4980B(f)(6), 29 CFR 2590.606-3.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 2005 - 40; LSA R.S. 29:724; LSA R.S. 29:766; LSA R.S. 22:2; LSA R.S. 22:3; LSA R.S. 22:1214.(7), (12) and (14); LSA R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

3159. Adoption of Extended Time Frames for COBRA

- A. The Commissioner hereby incorporates by reference all provisions of 70 Fed. Reg. 55500-55502 and 59620 with regard to times frames pursuant to COBRA as if set forth herein *in extenso*.
- B. With respect to insureds/persons health insurance issuers, HMOs, PPOs, MCOs, TPAs and any and all other health insurance entities must disregard the period from August 26, 2005 through February 28, 2006 when determining any of the following time periods and dates for group health insurance coverage:
 - 1. The 60 day period to elect COBRA continuation coverage under ERISA Section 605 and Code section 4980B(f)(5).
 - 2. The date for making COBRA premium payments pursuant to ERISA Section 602(2)(C) and (3) and Code section 4980B(f)(2)(B)(iii) and (C).
 - 3. The date for individuals to notify the plan of a qualifying event or determination of disability under ERISA section 606(a)(3) and Code section 4980B(f)(6).
- C. Section 17.16 of Emergency Rule 17 in reference to LSA - R.S. 22:215.13 (entitled Part VI. Health and Accident Insurance) is hereby amended to be in conformity with any and all extension of timeframes set forth in 29 CFR Part 54, 29 CFR 2560 and 2590.

3161 Extended Time Frames for State Continuation

- A. The Commissioner hereby suspends LSA R.S. 22:215.13 for group health insurance election time frames to allow insureds/persons additional time to elect group health insurance continuation. The Commissioner hereby extends the time frames to February 28, 2006 in order to ensure consistency with the federal guidelines issued in 29 CFR 2560, 2590 and 26 CFR 54.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 2005 - 40; LSA R.S. 29:724; LSA R.S. 29:766; LSA R.S. 22:2; LSA R.S. 22:3; LSA R.S. 22:1214.(7), (12) and (14); LSA R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

3163. Nonrenewal, Nonreinstatement and Premium Increase

- A. The Commissioner reiterates that, except as provided for in Section 2715 (Section 15.13) of Emergency Rule 15, the nonrenewal or nonreinstatement of any and all types of insurance enumerated in Section 2703 (Section 15.2) of Emergency Rule 15 and in Section 3101.B (Section 17.2) of Emergency Rule 17, including any and all other insurance licensed by the Commissioner, or doing business in Louisiana, that was in effect at 12:01 a.m. on August 26, 2005 is hereby suspended and shall be deferred until January 1, 2006 for those insureds who are current with their premium payments.
- B. The Commissioner reiterates that any rate increase that may be applicable to any and all types of insurance enumerated in Section 2703 (Section 15.2) of Emergency Rule 15 and in Section 3101.B (Section 17.2) of Emergency Rule 17, including any and all other insurance licensed by the Commissioner, or doing business in Louisiana, that was in effect at 12:01 a.m. on August 26, 2005 shall be deferred until January 1, 2006, and said insurance shall continue in full force and effect until January 1, 2006 at the previously established premium for those insureds who are current with their premium payments.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 2005 - 40; LSA R.S. 29:724; LSA R.S. 29:766; LSA R.S. 22:2; LSA R.S. 22:3; LSA R.S. 22:1214.(7), (12) and (14); LSA R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

3165. Continuing Jurisdiction

- A. The Commissioner hereby retains the right of continuing jurisdiction over all sections and provisions set forth Emergency Rule 17, as originally adopted and/or as amended, after the termination of Emergency Rule 17

for purposes of interpretation, enforcement and any and all other regulatory action.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 2005 - 40; LSA R.S. 29:724; LSA R.S. 29:766; LSA R.S. 22:2; LSA R.S. 22:3; LSA R.S. 22:1214.(7), (12) and (14); LSA R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

3167. Severability Clause

- A. If any section or provision of Emergency Rule 17, as originally adopted and/or as amended, is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of Emergency Rule 17, as originally adopted and/or as amended, to any persons or circumstances that can be given effect without the invalid sections or provisions and the application to any person or circumstance shall be severable.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 2005 - 40; LSA R.S. 29:724; LSA R.S. 29:766; LSA R.S. 22:2; LSA R.S. 22:3; LSA R.S. 22:1214.(7), (12) and (14); LSA R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

Adopted this 1st day of November, 2005, Baton Rouge, Louisiana.

J. Robert Wooley
Commissioner of Insurance